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FISCAL IMPACT REPORT

SPONSOR Harper / Moores **ORIGINAL DATE** 1/28/16 **LAST UPDATED** _____ **HB** 211/aHRPAC
SHORT TITLE Employment Preemption & Minimum Wage **SB** _____
ANALYST Klundt

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate	Indeterminate			

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 125 and HB 154

SOURCES OF INFORMATION

LFC Files

Responses Received From

Workforce Solutions Department (WSD)

Secretary of State (SOS)

Administrative Office of the Courts (AOC)

Economic Development Department (EDD)

SUMMARY

Synopsis of HRPAC Amendment

The Regulatory and Public Affairs Committee's amendment to House Bill 211 adds language permitting state political subdivisions to adopt laws prohibiting employment discrimination.

Synopsis of Bill

House Bill 211 prohibits all state political subdivisions, including New Mexico's 11 "home rule" municipalities, from regulating or attempting to regulate the relationship between private-sector employers and employees with requirements that "exceed" those imposed by state or federal laws. Municipalities, counties and state institutions could not adopt, or continue in effect, any law that regulates the hours, scheduling or leave of workers in the private sector, imposes a higher minimum wage than the state minimum wage on private-sector employers or requires such employers to provide workers with paid or unpaid leave, fringe benefits or benefits that would incur an expense.

FISCAL IMPLICATIONS

No state agency's reported a fiscal implication. However, there are currently several local governments with minimum wages higher than the state minimum wage rate of \$7.50: Santa Fe County (\$10.66), City of Santa Fe (\$10.84), Bernalillo County (\$8.65), the City of Albuquerque (\$8.75) and the City of Las Cruces (\$8.40 increasing to \$10.10 in 2019). This bill would have an indeterminate fiscal implication for these communities.

EDD reports regionally New Mexico is dominated by different economic base industries that pay a broad range of hourly wage rates. Policy regarding minimum wages also impacts the recruitment of new industry; minimum wage rate policy created at the local level gives a community the authority to determine the kind of employers it will welcome.

SIGNIFICANT ISSUES

The current minimum wage rate in New Mexico is \$7.50, which is higher than the federal minimum wage of \$7.25. Three cities and two counties in New Mexico have minimum wage rates that are higher than the state minimum wage. The three cities are Albuquerque, Santa Fe and Las Cruces. The two counties are Bernalillo County and Santa Fe County.

HB 211 would expressly preempt all New Mexico political subdivisions, including its "home rule" municipalities, from adopting or keeping regulatory requirements specific to the relationship between private-sector employers and employees if the requirements exceed those imposed by state or federal law. All three cities in New Mexico with higher minimum wages than the state are home rule municipalities. Home rule municipalities "may exercise all legislative powers and perform all functions not expressly denied by general law or charter." N.M. Const. Art. X, § 6(D).

A 2005 New Mexico Court of Appeals case, *New Mexicans for Free Enterprise v. The City of Santa Fe*, held that the city of Santa Fe's minimum wage ordinance was a proper exercise of an "independent municipal power" and consistent with the amendment to New Mexico's constitution that granted municipalities home rule back in 1970.

CONFLICT, RELATIONSHIP

House Bill 125 increases the statewide minimum wage to a minimum of \$10.10 per hour by January 1, 2019 through a series of annual increases enumerated in the bill. Additionally, starting January 1, 2017, there will be added increases every year that are over and above those specifically set forth in HB 125. These added increases are linked to a consumer price index or CPI. Finally, employees who customarily and regularly receive more than \$30 a month in tips shall be paid a minimum wage that is equal to 40 percent of the minimum wage in effect for non-tipped employees. HB 125 applies to both the public and private sector.

House Bill 154 increases the minimum wage to \$15 per hour by January 1, 2017, with successive annual increases beginning January 1, 2018 that are linked to a CPI. HB 154 eliminates the current separate method for calculating the minimum wage applicable to tipped employees. HB 154 applies to both the public and private sector.

TECHNICAL ISSUES

HB 211 would repeal the provision of New Mexico's Minimum Wage Act, NMSA 1978, § 50-4-19 through § 50-4-30, that a "local law or ordinance...in effect on January 1, 2007 that provides for a higher minimum wage than that set forth in the Minimum Wage Act shall continue in full force and effect until repealed." *See* NMSA 1978, § 50-4-22.1 (being Laws 2007, Chapter 47, Section 3).

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